

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY LEUTENEGGER, GERALD
POE, and MIKE SEE,

ORDER

Plaintiffs,

10-cv-234-wmc

and

KEVIN GUYNN and RONALD
WALKER,

Involuntary Plaintiffs,

v.

FOILES MIGRATORS, INC. and
JEFFREY B. FOILES,

Defendants.

Now before the court in this matter is defendant Foiles Migrators, Inc.'s apparent default and defendant Jeffrey B. Foiles' motion for summary judgment.

Default

The court granted defendants' counsel's motion to withdraw on July 20, 2011 (dkt. #58), and in an order dated July 27, 2011 (dkt. #60), gave defendant Foiles Migrators, Inc. an additional 14 days (until August 10, 2011) to retain new counsel. This date has lapsed and after having been repeatedly warned of the consequences of not retaining new counsel (*see* dkt. ##56, 58, 60), the court finds defendant Foiles Migrators, Inc. in default for failure to defend this action. Because default has been entered against defendant Foiles Migrators, the court accepts as true all of the factual allegations in the complaint, except those relating to damages. *In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004). Accordingly, the court will hold a hearing on

damages and enter a default judgment against Foiles Migrators, Inc. on October 5, 2011, at 8:30 a.m. Plaintiffs shall serve and file all evidence of damages in affidavits or other admissible form by September 23, 2011.

Summary Judgment Motion

Instead of retaining new counsel, defendant Jeffrey B. Foiles now moves *pro se* for summary judgment based on unsworn representations in his motion that there is no valid basis to pursue him individually. Even if this motion were properly supported, and it is not, the motion would be untimely. (The deadline for filing dispositive motions passed on July 8, 2011. (Pretrial Conference Order (dkt. #27) ¶5.)) On the other hand, the court is not inclined to proceed with a trial as to defendant Jeffrey B. Foiles' liability if there is no basis for personal liability. Accordingly, by September 23, 2011, plaintiffs shall also provide the court in affidavit or other admissible form the factual basis for holding Jeffrey Foiles individually liable, which will also be addressed on October 5, 2011.

ORDER

IT IS ORDERED that:

- 1) defendant Foiles Migrators, Inc. is in default;
- 2) by September 23, 2011, plaintiffs shall serve and file (a) all evidence of damages in support of default judgment against defendant Foiles Migrators, Inc., and (b) the factual basis for holding defendant Jeffrey Foiles individually liable; and
- 3) a hearing will be held on both matters in open court on October 5, 2011, at 8:30 a.m.

Entered this 12th day of August, 2011.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge